

### **REMARKS**

Applicants have received and reviewed the Office Action dated February 22, 2010. Applicants have canceled claims 57, 58, 63, and 85 without prejudice, amended claims 56, 61, 64, 65, 72, 77, 78, and 80, and added claims 86 and 87. Support for the recitation of claims 86 and 87 can be found throughout the specification as filed including at least at page 34, lines 1-15. No new matter has been added. Claims 56, 59-62, 64-84, 86, and 87 are pending, but claim 79 has been withdrawn. Applicants submit that the amended and newly presented claims are supported by the specification as filed.

For the reasons presented below, Applicants respectfully submit that the amended and newly presented claims are in condition for allowance, and notification to that effect is earnestly solicited.

### **Priority**

The Office Action asserts that the priority application U.S. Application No. 10/800,200 does not disclose the ratio recited in claim 73. Applicants respectfully disagree. This priority application as filed at least at page 9, lines 18-21, and at page 40, lines 13-25, and original claim 30 discloses the beverages and ratio of trihydroxyoctadecenoic acids recited in claim 73. Furthermore originally filed Example 8 exemplifies such beverages. Claim 33 as originally filed with the priority application discloses beverages with a level of T2N as recited in claim 75 and original claim 35 disclosed beverages with a level of T2N as recited in claim 75 and a ratio of trihydroxyoctadecenoic acids as recited in claim 73. Thus, claims 73-75 are entitled to the filing date of the priority application U.S. Application No. 10/800,200.

Applicants respectfully request that the Office acknowledge that claims 73-75 are entitled to the priority date of U.S. Application No. 10/800,200.

### **Rejection of Claims Under 35 U.S.C. § 102(a) or 103(a)**

The Examiner rejected claims 56-78 and 80-85 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Douma et al., WO 2002053721. Applicants respectfully traverse this rejection.

The amended independent claims recite "the barley plant has a mutation in the LOX-1 gene so that it encodes a mutated LOX-1 protein lacking all or at least a portion of amino acids

520 to 862 of wild type barley LOX-1 (SEQ ID NO: 3 or 7) with a total loss of LOX-1 activity". The cited Douma et al. reference discloses neither a LOX-1 lacking these amino acids nor the total loss of LOX-1 activity. Thus, this reference neither teaches nor suggests the presently claimed invention.

In fact, the cited Douma et al. reference discloses barley that retains at least 10% LOX-1 activity as compared to the wild-type enzyme. Not a single barley plant lacking LOX-1 activity was identified after screening as many as 20,000 mutagenized barley plants.

Accordingly, based on the foregoing differences, Applicants submit that the cited reference neither teaches nor suggests the presently claimed plant products and methods, and withdrawal of this rejection is earnestly solicited.

#### **Obviousness-Type Double Patenting**

The Examiner rejected claims 56-71 and 76 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-11 of US 6,660,915. The Examiner rejected claims 56-72 and 76 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-11 of US 7,420,105. Applicants respectfully traverse these rejections.

When the claims are free of other rejections, Applicants will submit a Terminal Disclaimer, if appropriate, to address these rejections.

#### **Summary**

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate.

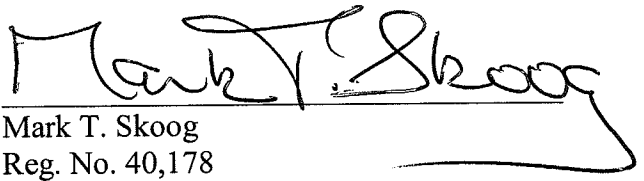
Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

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MTS:kf

  
Mark T. Skoog  
Reg. No. 40,178

